

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

MONDAY, THE 29TH OCTOBER 2007 / 7TH KARTHIKA 1929

Crl.Rev.Pet.No. 706 of 2000()

**-----
CRA.269/1999 of V ADDL.SESIONS COURT, ERNAKULAM
ST.1700/1997 of JUDL. MAGISTRATE OF FIRST CLASS-I, KOCHI
-----**

REVN. PETITIONER/APPELLANT/ACCUSED:

**AMMINI JOHN, ARAKKAPARAMBIL HOUSE,
CC.9/1979, VELI, FORT KOCHI.**

BY ADV. SRI.T.O.XAVIER

RESPONDENTS/RESPONDENTS/COMPLAINANT AND STATE:

**1.ROHINI,W/O.VISWAMBHARAN,PUTHENVEETIL HOUSE,
X/959, AMARAVATHI, KOCHI.**

**2.STATE OF KERALA, REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.**

BY PUBLIC PROSECUTOR SRI.K.C.SANTHOSH KUMAR

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 29/10/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

J.B.KOSHY, J.

Criminal R.P.No.706 OF 2000 ()

Dated this the 29th day of October, 2007

ORDER

Revision petitioner issued a cheque for Rs.1,50,000/- dated 2.5.1997 to the complainant/1st respondent. When the cheque was sent for collection, it was returned with the endorsement "insufficiency of funds". Later notice was issued. But there was no reply. Since the amount was not paid, complaint was filed under Section 138 of the Negotiable Instruments Act. The complainant was examined. He proved that Ext.P1 cheque was issued for a duly enforceable debt. He gave on three occasions Rs.50,000/- each. When the amount was not paid, cheque was executed. Accused was examined as DW2. She admitted that she had received money from DW1 on several occasions but it was not paid back. But no evidence was adduced to prove the defence. In fact, the evidence of DW2 clearly shows that she has executed a cheque. The Bank Manager was examined as PW2 to prove that cheque was

dishonoured for insufficiency of funds. Only contention stated is that notice was not served on the accused, but it was returned unclaimed. Ext.D1 is the intimation which shows that Ext.P6 notice was given to the accused and her husband refused to receive the same. Hence it was returned. The summons issued from the Court in the same address was received by her. Therefore address was correct and notice of dishonour was issued in the correct address. Even after receipt of summons within 15 days, she did not pay back the amount. Decision of the Apex Court in **Dileep S. Dahanukar v. Kotak Mahindra Co. Ltd. and another (2007 (6) SCC 528)** is applicable. Therefore complaint cannot be dismissed for want of statutory notice. I see no ground to interfere in the conviction entered by the trial court which was upheld in a revision petition. However, I note that imprisonment of two months with a fine of Rs.5,000/- was imposed as sentence which is not in proportion to the offence proved. In these circumstances, I convert the sentence and sentence is altered as imprisonment for 3 days and to pay a compensation of Rs.50,000/-. If the amount is not paid or deposited the amount

can be recovered under Section 421 read with Section 321 of the Code of Criminal Procedure. If the compensation is recovered, it shall be paid to the complainant. With the above directions this revision petition is allowed.

J.B.KOSHY, JUDGE

prp

J.B.KOSHY

Criminal.R.P.706 OF 2000

O R D E R

29th October, 2007